Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-IP Evolution.	 GN Docket No. 12-353

REPLY COMMENTS OF THE AMERICAN CABLE ASSOCIATION

The American Cable Association ("ACA") respectfully submits these reply comments filed in response to the AT&T[1] and NTCA[2] Petitions to initiate proceedings relating to the transition of incumbent local exchange carriers ("ILECs") from Time Division Multiplexing ("TDM") to Internet Protocol ("IP") infrastructures.

I. Introduction

ACA represents over 800 small and mid-sized providers of video programming services, most of whom also offer voice services and broadband Internet access services. Some of these providers are ILECs or competitive local exchange carriers ("CLECs") that offer voice services

1 *The Technological Transition of the Nation's Communications Infrastructure*, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353 (filed Nov. 7, 2012) ("AT&T Petition").

2 *The Technological Transition of the Nation's Communications Infrastructure,* Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353(filed Nov. 19, 2012) ("NTCA Petition").

using traditional circuit-switched (TDM) technology. Most others are cable operators that offer – either directly or through a third-party carrier – managed IP voice ("VoIP") service, which ensures quality of service similar to TDM voice service. From both a carrier and customer perspective, managed VoIP services differ substantially from "over-the-top" VoIP service, which transits the "best efforts" Internet, and where service quality may be degraded during the call. In providing managed VoIP service, these operators or their designated carriers need to enter into arrangements with other providers that contain quality of service guarantees and have relied upon the framework of section 251(c)(2) of the Communications Act (the "Act")[3] to ensure they are able to do so at cost-based rates and on reasonable and non-discriminatory terms.

Accordingly, to ensure a pro-competitive environment and further the development of networks, the Commission should clarify that regardless of technology all interconnection for the exchange of traffic is governed by sections 251 and 252 of the Act. This position is consistent with that taken by NTCA in its filing.[4] ACA disagrees with AT&T's position that no interconnection regulations should be permitted with all-IP infrastructure and its proposal to have the Commission set-up an IP interconnection "trial-run" experiment with no regulations.[5] ACA agrees with Cox Communications that AT&T's proposal "would limit voice traffic exchange for

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[3] 47 U.S.C. § 251(c)(2). ACA notes that section 251(f) of the Act provides an exemption from section 251(c) for certain rural telephone companies under certain circumstances.

[4] *See* NTCA Petition at 13-14.

[5] *See* AT&T Petition at 20-22. The Commission also should reject the trials proposed in AT&T's Petition to the extent they would undermine its interconnection obligations. As discussed herein, interconnection is a statutory obligation, and the Commission cannot simply ignore this mandate. Moreover, it would be bad policy to remove a requirement that serves the public interest by furthering competition and protecting consumers.

IP-based services to 'best efforts," threatening the reliability of voice services provided to consumers."[6]

AT&T is incorrect that Sections 251 and 252 are limited to TDM technology – despite recognizing the absence of such a limitation in the plain text of the Act. In contrast, as discussed above, NTCA properly states that the interconnection obligations of the Act continue to hold "regardless of the technology used to achieve such interconnection."[7] AT&T also fails to provide sufficient evidence to indicate that the market for managed voice services has become sufficiently competitive such that ILECs should no longer be subject to interconnection requirements of the Act. As Cox Communications notes in its comments, "because the ILEC networks are foundational to all interconnection for voice services, incumbents are well positioned to exploit this industry-wide transition by unilaterally imposing network changes in an anti-competitive manner."[8] Cablevision strikes a similar note: "ILECs hold disproportionate power in the market for interconnection services."[9] ACA of course recognizes there has been considerable competitive entry into the provision of retail voice service markets, but this success does not mean that the larger ILECs like AT&T no longer are dominant in the interconnection market.

In sum, the Commission should immediately affirm that Sections 251 and 252 apply regardless of the technology platforms involved and, if the Commission does decide to proceed with trial run IP transition experiments, it should condition any such trial on the requirement that ILECs are subject to the interconnection requirements of Sections 251 and 252 of the Act. By

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6 *See* Comments of Cox Communications, Inc., GN Docket No. 12-353 at i (Jan. 28, 2013) ("Cox Comments").

7 NTCA Petition at 9.

8 Cox Comments at i.

9 Comments of Cablevision Systems Corporation, GN Docket No. 12-353 at 4 (Jan. 28, 2013).

taking this course, the Commission will provide the proper incentives for providers to continue to compete and invest in the market.[10]

II. The Commission Should Affirm That Sections 251 And 252 Of The Act Are Technologically Neutral

Neither the Act generally nor sections 251 and 252 of the Act delineate any requirements by the type of technology or platform used to interconnect between carriers. Section 251(a) requires all carriers to interconnect directly or indirectly and section 251(c)(2) requires ILECs to provide interconnection to "any requesting telecommunications carrier … for the transmission and routing of telephone exchange service or exchange access." Similarly, section 252(c)(2) provides a statutory vehicle to enforce the requirements of section 251. Managed VoIP services are telephone exchange services and exchange access services under the Act.[11] Neither section references any sort of limitation based on technology as suggested by AT&T. As Cox Communications noted in its Reply Comments on the Connect America Fund Further Notice of Proposed Rulemaking, "this technology–agnostic approach is consistent with the practice when the Telecommunications Act of 1996 was adopted – providers interconnected using all technologies in place at the time, such as electrical interfaces, optical interfaces, landline and wireless."[12] The absence of technology restrictions should be fatal to arguments that these sections are limited to TDM interconnections. The Commission should affirm this approach.

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[10] *See, e.g., Connecting America: The National Broadband Plan* (2010).

[11] *See* 47 U.S.C. §§ 153(47) (defining "telephone exchange access service"), 153(16) (defining "exchange access").

[12] Reply Comments of Cox Communications, Inc. on Sections XVII.L-R, *Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, et al., FCC 11-161 (filed Mar. 30, 2012). *See also* Cox Comments at 9-10 ("[R]egardless of the technology and physical platform that two providers of voice services bring to the point where traffic is exchanged, that exchange remains subject to the basic obligations under Sections 251 and 252. Cox and others have affirmed this point repeatedly before the Commission.").

The Commission has previously approved of this approach and stated that Sections 251 and 252 apply regardless of the technology employed. In the *Connect America Fund Further Notice*,[13] the Commission stated that "we observe that section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral – they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks."[14] Further, the Commission has already recognized that IP-enabled voice services are the functional equivalent to voice communications transmitted using TDM technology in a number of circumstances, applying various voice regulatory obligations to IP-enabled voice services.[15]

The NTCA Petition recognizes that "all interconnection for the exchange of traffic subject to sections 251 and 252 is governed by the Act, regardless of the technology that might happen to be used to achieve such interconnection."[16] The Commission should take this opportunity to clarify for all ILECs that section 251 and 252 apply regardless of the technology used to interconnect.

III. Managed VoIP Providers Would Face Unique Competitive Obstacles Without Recourse to Sections 251 and 252 Of The Act

The obligations placed on ILECs under sections 251 and 252 are critical for managed VoIP providers because they require real time, full duplex communications throughout the duration of each call. Unlike customers using over-the-top Internet VoIP calls, managed VoIP

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13 *Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, et al., FCC 11-161 (rel. Nov. 18, 2011) (the "Connect America Further Notice").

14 *Id.*, ¶ 1342.

15 *See* Comments of Peerless Network, Inc., *In the Matter of the Technological Transition of the Nation's Communications Infrastructure* (filed Jan. 28, 2012) (compiling citations).

16 NTCA Petition at 14.

customers expect and require a high-quality service level for each call. These services are more akin to traditional voice services than IP packet services.

The practical result of this high-quality service requirement is that managed VoIP providers must minimize the number of interconnection routing points to minimize degradation of their voice services. Each point of intermediate exchange during routing raises potential degradation of a call, forcing managed VoIP providers to either (i) directly connect with all other potential terminating carriers (which is unrealistic, as even the largest carriers today do not have direct connections to all other carriers and a waste of resources where little traffic is exchanged); or (ii) interconnect with large carriers who are connected to numerous other carriers (such as the ILECs), to route the call with one intermediate exchange. In most larger markets, only ILECs are connected to most carriers, and ILECs are usually the sole carriers that can offer a single intermediate exchange routing.

Without being subject to the requirements of sections 251 and 252, ILECs could refuse to interconnect on reasonable terms with managed VoIP providers, effectively forcing them to increase the number of intermediate exchanges in their routing and degrade the quality of their voice services by routing through two or more intermediate carriers. In contrast, for "over-the-top" VoIP providers, multiple intermediate exchange routing does not pose a problem because they do not require real time, full duplex communications and can tolerate multiple intermediate exchanges to bypass a carrier that refuses to interconnect on reasonable terms.

IV. Larger ILECs Continue to Dominate The Interconnection Market

Despite competition in select retail voice markets, larger ILECs continue to dominate the interconnection and transit markets. Charter Communications made this point in an *ex parte* letter filed late last year: "Just as in the traditional circuit-switched world, incumbent carriers have the ability to exercise market power in the managed VoIP market."[17] In its comments, Cablevision supported this conclusion and provided several bases for continuing ILEC market power. First, by virtue of the fact that they operate in and control larger geographic areas, the larger ILECs retain a dominant position in interconnection negotiations vis-a-vis competitive providers, who operate only in select areas.[18] Second, the two largest ILECs control significant volumes of wireless and international traffic through their unregulated affiliates.[19] Third, the larger ILECs control indirect connections between unaffiliated competitive local exchange carriers.[20]

In short, when dealing with these larger ILECs, managed VoIP providers are at a disadvantage in negotiating reasonable, competitive rates and terms. ACA members already have experienced problems when seeking IP interconnection with ILECs. For instance, larger ILECs frequently condition interconnection on multiple dedicated connections to each tandem within each LATA regardless of the amount of traffic anticipated and restrict the ability of carrier's to transit traffic across the ILEC network, which raises the cost of service artificially.

Sections 251 and 252 provide a vehicle to managed VoIP providers. ACA notes that section 251(f) of the Act provides an exemption from section 251(c) for certain rural telephone companies under certain circumstances to request interconnection and arbitrate the terms of the interconnection before the state utilities commission when the terms demanded by the ILEC are unreasonable. Without recourse to the state commissions, managed VoIP providers seeking to minimize their intermediate exchanges could be held captive by ILECs because no alternative

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17 *Ex Parte* Letter from Samuel L. Feder, Jenner & Block, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. at 2 (Dec. 17, 2012).

18 *See* Comments of Cablevision Systems Corp., GN Docket No. 12-353 at 4 (filed Jan. 28, 2013).

19 *See id*.

20 *See id*.

route exists without multiple intermediate exchanges forcing a degradation of their voice services.

V. Conclusion

For all the reasons stated in this reply, the Commission should immediately adopt an order affirming the applicability of Sections 251 and 252 of the Act. Despite the larger ILECs' protestations, it is clear that affirming Sections 251 and 252 would provide the stable regulatory environment that has permitted the current IP infrastructure build out. In contrast, experimenting with no regulatory guidelines for ILEC interconnection is not only not permitted by the statute but would have a chilling effect on investment by managed VoIP providers as many providers would adopt a "wait and see" stance while the experiment takes place.

Respectfully submitted,

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